

STATE OF MICHIGAN
COURT OF APPEALS

DAWN SHARYLL SUCHECKI,

Plaintiff-Appellant,

v

DAVID JOSEPH SUCHECKI,

Defendant-Appellee.

UNPUBLISHED

January 7, 2000

No. 211777

Ottawa Circuit Court

LC No. 96-026254 DO

Before: Murphy, P.J., and Hood and Neff, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals as of right from the circuit court's entry of an amended judgment of divorce consistent with the recommendations of the Ottawa Circuit Court Referee. We affirm.

Plaintiff and defendant were married when they were both nineteen years of age, and after thirty-four years of marriage, plaintiff filed a complaint for divorce. During their marriage, the couple started SOS Engineering, which at the time of divorce, had been in operation for over twenty years. After a bench trial, the court issued a judgment to which plaintiff took exception. Following a hearing before the Ottawa Circuit Court Referee, the court issued an order amending its original judgment consistent with the referee's recommendations. In pertinent part, the amended order included that: plaintiff was awarded the marital home; defendant was awarded both the building and the business of SOS; no alimony was awarded to plaintiff but the court reserved alimony if circumstances changed; and defendant was awarded three vehicles while plaintiff was awarded the vehicle in her possession. The court valued defendant's assets at \$966,818 and plaintiff's assets at \$149,937. The court held that an equal division would result with each having \$558,378 and ordered defendant to pay plaintiff \$408,441.

Because most of the parties' assets were derived from the family business, SOS Engineering, defendant was not able to pay cash up front to plaintiff without selling the company or leveraging it to the point where it could not operate. Ultimately, therefore, the court imposed a payment structure pursuant to which defendant was to pay plaintiff \$110,000 upon entry of the judgment and the balance of \$298,441 over a term of thirteen years at seven percent interest. The court ordered that a pledge of

stock of the company and a lien on the business assets of the company be given to plaintiff as security for the \$298,441 that defendant owed to plaintiff.

On appeal, plaintiff first argues that the trial court abused its discretion in failing to provide adequate security for payment to plaintiff of the property settlement provisions of the divorce decree. Next, plaintiff argues that the court abused its discretion in denying alimony. Plaintiff additionally argues that the trial court erred in failing to award plaintiff a vehicle free of obligations; that the trial court abused its discretion in dividing the parties' property equally, rather than apportioning the property favorably to plaintiff; and, that the trial court clearly erred in valuing the marital home and the business real estate because it used two different valuation dates. We find no merit in plaintiff's various arguments and accordingly affirm the judgment of the trial court.

Property settlements in divorce cases are reviewed de novo by this Court. *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). However, this Court will not substitute its own judgment for that of the trial judge unless there has been an abuse of discretion or it is convinced that, had it been sitting in the trial court's position, it would have reached a different result. *Id.* "The goal of the court when apportioning a marital estate is to reach an equitable division in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). Although each spouse need not receive a mathematically equal share, any significant departure from equality must be clearly explained by the trial court. *Id.* at 114-115. To reach an equitable division, the trial court should consider the duration of the marriage and each party's contribution to the marital estate, station in life, earning ability, age, health, needs, fault, past misconduct, as well as any other equitable circumstance. *Id.* at 115. The significance of each factor will vary from case to case and depending upon the circumstances, each factor need not be given equal weight. *Id.*

Regarding plaintiff's argument that she did not receive adequate security, plaintiff contends that the trial court erred in refusing to grant plaintiff a mortgage against the real property in which the family business operated. "[T]here is no rigid rule of division of property in divorce proceedings, the major consideration being the security of living for the wife. . . . Each case must be decided upon its own facts." *Ross v Ross*, 24 Mich App 19, 30; 179 NW2d 703 (1970). Although it reviewed the proposition of giving plaintiff a lien on the commercial building of the company, the trial court decided that this was not a feasible solution as it would have made plaintiff landlord and defendant tenant of the building in which SOS operates its business. The court noted that this proposal would have put defendant at plaintiff's mercy if defendant needed to borrow money on the building to fund day-to-day operations of the business, as defendant had done in the past during periods of tight cash flow.

While the court did not accede to plaintiff's request that she receive a lien on the commercial building, plaintiff's award was nevertheless adequately secured through the provision of a security interest on the company stock and on the business assets of the company. Plaintiff has not demonstrated that this security is insufficient, and we conclude that the trial court did not abuse its discretion by declining to secure plaintiff with a mortgage on the commercial building. *Ackerman, supra*.

We also find that the trial court did not abuse its discretion in denying plaintiff alimony at the time it entered judgment. At the time of entry, the court reserved the issue of spousal support in the event plaintiff could show change in circumstance. Subsequent to filing this claim of appeal, plaintiff moved for modification of the support provision alleging change of circumstance. The trial court swiftly granted plaintiff's motion, awarding alimony and arrearages to the date of the motion. The initial denial of spousal support, conditioned by a reservation of the issue to plaintiff, was based on the court's reasoned determination that plaintiff could readily maintain her standard of living on her anticipated earnings as she pursued her new real estate career as well as interest earned on assets awarded. This reasoned determination presents no abuse of discretion. Moreover, in quickly granting modification on plaintiff's showing that her beginning career earnings were lower than anticipated, the court supported the propriety of its initial decision. As regards any continuing claim of error, this Court will not generally review moot issues or decide moot cases. *In re Wayne Co Election Comm*, 150 Mich App 427, 432; 388 NW2d 707 (1986). "An issue is moot where circumstances render it impossible for the reviewing court to grant any relief." *Id.* Because the trial court has now awarded plaintiff alimony, further review of this issue is precluded because it is impossible for this Court to grant relief.

Plaintiff's next argument, concerning the court's failure to award her a car free of obligation, is likewise without merit. Pursuant to the property settlement, plaintiff was awarded the car that she was driving, along with its debt. Outstanding debts also existed against the vehicles defendant was awarded. Along with all other current circumstances, the various net values of the vehicles identified as marital assets were appropriately taken into consideration in the overall financial settlement. *Byington, supra* at 115. Contrary to plaintiff's assertion, that the court did not award plaintiff the use of vehicle free of obligation does not render this settlement inequitable. *Id.* at 114.

Regarding plaintiff's next contention, that the court erred in dividing the parties' property equally in the absence of consideration of fault, this court will not reverse dispositional rulings unless this court is left with a firm conviction that the division of assets was inequitable. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999). Although the court's written opinion did not specifically address fault as related to defendant's behavior, the court did address the issue orally, finding that defendant's behavior did not constitute fault. Under the circumstances presented, we conclude that the trial court's decision regarding the division of the parties' assets was fair and equitable. *Id.* at 713.

Finally, plaintiff's contention of clear error in the valuation of the marital home and the business real estate is also without merit. The question of valuation of marital assets was addressed in detail in *Byington, supra* at 114, n 4. Typically, marital assets are valued either at the time of trial or at the time judgment is entered but, at the discretion of the trial court, can be valued at a more appropriate date. *Id.* Here, plaintiff stipulated to the valuation of the business real estate at the time of the hearing on the matter. Though not disputing this stipulation, plaintiff contends that because this stipulation reflected the value of the business realty as of the time of the filing of the complaint, it was error for the trial court to value the marital home as of the time of trial. Plaintiff argues that mortgage payoffs during the intervening time period resulted in an

asset valuation discrepancy favorable to defendant. In determining the property settlement the court was bound by the stipulation as to the valuation of the business realty. Given our conclusion that in light of all the circumstances the court reached an equitable division of the marital estate, plaintiff has not shown that valuing the marital home as of the time of trial was an inappropriate exercise of discretion.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Janet T. Neff